

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.02.14 - RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

#### DOCKET NO. 20-0214-0801 (NEW CHAPTER)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 58-104(6) and 58-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

IDAHO DEPARTMENT OF LANDS		
Friday - September 5, 2008 10:00 am - 11:30 am PDT 3780 Industrial Ave S. Coeur d'Alene, ID	Thursday - September 11, 2008 3:00 pm - 4:30 pm PDT 10230 Hwy 12 Orofino, ID	Thursday - September 18, 2008 10:00 am - 11:30 am MDT 300 North 6th Street, Suite 103 Boise, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule is a consolidation and shortening of two existing rules that are concurrently being repealed, IDAPA 20.02.09 and IDAPA 20.02.10. This rule will eliminate duplication and expense of maintaining Rules that do not provide clarification or interpretation of the Statutes.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: There is no fiscal impact associated with this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220(2), Idaho Code, negotiated rulemaking was not conducted due to the simple nature of this rulemaking.

**GENERAL INFORMATION:** For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. IDL will consider all written comments received by the undersigned on or before September 24, 2008.

DATED this 17th day of July, 2008.

Robert Helmer, Chief  
Bureau of Forest Management  
Idaho Department of Lands  
3780 Industrial Ave. S  
Coeur d'Alene, Idaho 83815  
Phone: (208) 769-1525 / Fax No. (208) 769-1524

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0214-0801**

**IDAPA 20**  
**TITLE 02**  
**CHAPTER 14**

**20.02.14 - RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Sections 58-104(6), 58-105, 67-5201, et seq, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 20.02.14 “Rules for Selling Forest Products on State-Owned Endowment Lands”. ( )

**02. Scope.** These rules govern the selling of forest products from state endowment lands. ( )

**002. WRITTEN INTERPRETATION.**

The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and information opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions and other written interpretations, if applicable, are available for public inspection and copying at the Director’s Office of the Idaho Department of Lands, Boise, Idaho. ( )

**003. ADMINISTRATIVE APPEALS.**

Any person aggrieved by any final decision or order of the Board shall be entitled to judicial review pursuant to the provisions of Sections 58-122 and 67-5201, et seq, Idaho Code. (“Administrative Procedures Act”), and IDAPA 20.01.01. ( )

**004. INCORPORATION BY REFERENCE.**

The following document is incorporated by reference into these rules: American National Standard Institute, 05.1, 2002 Edition, published by the Alliance for Telecommunication Industry Solutions and available to purchase on the Internet at: <http://www.atis.org>. ( )

**005. OFFICE - OFFICE HOURS - MAILING ADDRESS AND STREET ADDRESS.**

The principal place of business of the Idaho Department of Lands is in Boise, Idaho. ( )

**01. Address.** The office is located at 300 N. 6th Street, Ste. 103, Boise, Idaho. ( )

**02. Office Hours.** Open from 8 a.m. to 5 p.m., Monday through Friday, except weekends and holidays. ( )

**03. Mailing Address.** Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720. ( )

**04. Telephone.** The telephone number is 208-334-0200. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to and in compliance with the provisions of Sections 9-337, et seq., Idaho Code. (“Public Records Act”). All records related to this chapter are public records except to the extent such records are, by law, exempt from disclosure. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

- 01. Board.** The Idaho State Board of Land Commissioners. ( )
- 02. Cable Yarding.** Transportation of forest products from stump to road by means of a suspended, powered cable system. ( )
- 03. Cedar.** Western Red Cedar (*Thuja plicata*) which is a forest species that is plentiful on state-owned forest lands in northern Idaho. ( )
- 04. Cedar Pole.** A segment or portion of a western red cedar tree that can be manufactured into a utility pole meeting current ANSI Specifications. ( )
- 05. Contract.** Timber sale contract in a form prescribed by the Department. ( )
- 06. Cutting Unit.** A defined portion of a timber sale that is identified on a map and on the ground. ( )
- 07. Department.** The Idaho Department of Lands. ( )
- 08. Development Credits.** A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. ( )
- 09. Director.** The director of the Idaho Department of Lands or his authorized representative. ( )
- 10. Extreme Circumstances.** Catastrophic circumstances including, but not limited to, fire, downed timber due to a wind event, flood, earthquake, destruction of a purchaser's milling facilities or equipment by fire, or milling operation shut down due to a court order related to compliance with state or federal environmental laws. ( )
- 11. Forest Products.** Major forest resources including sawlogs, pulp, cedar poles, and cedar products suitable for split products or other marketable materials. ( )
- 12. Ground-Based Yarding.** Transportation of forest products from stump to road using tractors, forwarders, or rubber-tired skidders. ( )
- 13. Length.** The length of a pole in five (5) foot increments. ( )
- 14. Measurement.** Weight, length, board foot volume, cubic volume, or any other means or procedure for determining quantity of forest products. ( )
- 15. Net Appraised Value.** The minimum estimated sale value of the forest products after deducting the development credit. ( )
- 16. Net Sale Value.** The final sale bid value of the forest products after deducting the development credit. ( )
- 17. Pulp.** Any portion of a sawlog that does not meet the sawlog merchantability specifications of thirty-three and one-third percent (33 1/3%) net scale. ( )
- 18. Purchaser.** A successful bidder for forest products from a state sale who has executed a timber sale contract. ( )
- 19. Roads.** Forest access roads used for the transportation of forest products. ( )

20.     **Scaling.** Quantitative measurement of logs or other forest products by a log rule. (     )
21.     **Scribner Decimal “C” Board Foot Measure.** The measurement of forest products in accordance with the log rule described in Title 38, Chapter 12, Idaho Code, and the rules promulgated thereunder. (     )
22.     **State.** The State of Idaho. (     )
- 011.     ABBREVIATIONS.**
01.     **ANSI.** American National Standards Institute. (     )
02.     **IDAPA.** Idaho Administrative Procedures Act. (     )
03.     **MBF.** Thousand Board Feet. (     )
- 012. -- 018.     (REERVED).**
- 019.     FIREWOOD AND PERSONAL USE PRODUCT PERMITS.**  
Permits for the sale of dead and down forest products will be on a charge basis at a rate determined by the Board. Permits will not exceed a maximum value established by the Director. (     )
- 020.     DIRECT SALES.**  
The direct sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. This type of sale is to be used to harvest isolated or by-passed parcels of timber of insufficient value and volume to justify a salvage sale (refer to Rule Section 021). The direct sale shall not be used when two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The duration of a direct sale shall not exceed an initial period of six (6) months with a provision for one six (6) month extension. The purchaser shall furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). Advance payment will be required and all sales will be on a lump sum basis. (     )
- 021.     SALVAGE SALES.**  
Salvage sales shall not exceed the net appraised value and volume established by the Board and are intended to be used in the harvesting of timber which, in the opinion of the Director, is of insufficient quality and/or quantity to support a timber sale (refer to Rule Section 022). The contract requirements for salvage sales shall be the same as for timber sales. (     )
- 022.     TIMBER SALES.**  
Timber sales exceed the net appraised value or volume for salvage sales established by the Board. (     )
- 023.     CEDAR POLE SALE SELECTION.**
01.     **Requirements for Cedar Pole Sale.** An area shall be reserved for a pole-quality cedar sale if the area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas and at least ten (10) poles per acre on cable yarding areas. Areas with a lower density of poles may be offered as a pole sale if the Department determines that such sale is economically feasible. (     )
02.     **Maximum Amount of Sawlogs.** Sawlogs and other forest products shall not exceed fifty percent (50%) of the total sale volume, excluding materials generated through the construction of roads and development sites. (     )
03.     **Poles within Sawlog Sale.** If any area within a sawlog sale contains two hundred fifty (250) cedar poles or more in a density of at least ten (10) poles per acre, the area shall be reserved for a pole-quality cedar sale. (     )
- 024.     CEDAR POLE SALE PROCEDURES.**

**01. Length Appraisal.** Cedar poles shall be appraised by length and bid on a lineal foot basis. The conversion table set out below shall be used to establish the corresponding board foot volume. ( )

**02. Length to Volume Conversion Table for Western Red Cedar Poles:**

Pole Length	Board Feet Each*
30'	50
35'	70
40'	101
45'	161
50'	239
55'	261
60'	304
65'	418
70'	462
75'	512
80'	595
85'	736
90'	792
95'	892
100'	929
105'	1113
110'	1132
115'	1420
120'	1475
* Based on Scribner Decimal "C" board foot measure	

( )

**03. Bidding Limited to Cedar.** When cedar represents eighty percent (80%) or more of the total appraised value, bidding shall be limited to cedar poles and cedar sawlogs only. ( )

**04. Purchaser's Option.** The purchaser may opt to remove cedar as poles, sawlogs, and products or as sawlogs and products. Such choice shall be made at the completion of the auction. ( )

**05. Option to Manufacture.** If the purchaser opts to manufacture the cedar as poles, the poles and sawlog material shall be removed at bid prices (lineal foot basis for poles and MBF basis for sawlogs). Pole-quality cedar trees containing thirty (30) foot cedar poles may be harvested as poles or sawlogs at the purchaser's discretion unless such trees are designated reserve. ( )

**06. Option to Manufacture Sawlogs.** If the purchaser elects to manufacture cedar poles as sawlogs, the bid values of cedar poles and cedar sawlog material shall be weighted by volume to determine the selling value for all cedar sawlogs. ( )

**025. POLE SPECIFICATIONS.**

Poles will conform to current ANSI Specifications and Dimensions for Wood Poles unless agreed otherwise by contract. ( )

**026. ANNUAL SALES PLAN.**

The Department will prepare an annual sales plan which will describe the timber sales to be offered for sale during the forthcoming fiscal year. The plan will be based on recommended annual harvest volumes utilizing inventory data, local stand conditions, special management problems, and economic factors. The plan will be presented to the Board for approval annually and upon approval made available to all interested parties. The plan may be altered to respond to changing market conditions or to expedite the sale of damaged or insect-infested forest products. Each individual timber sale will be submitted to the Board for approval prior to advertisement. ( )

**027. -- 030. (RESERVED).**

**031. TIMBER SALE AUCTIONS.**

**01. Requirements for Bidding.** ( )

**a.** Bidders shall present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. ( )

**b.** Bidders shall not be delinquent on any payments to the State at the time of sale. ( )

**c.** Bidders shall not be a minor as defined in Section 32-101, Idaho Code. ( )

**d.** Foreign corporations, as defined in Section 30-1-106, Idaho Code, shall procure a certificate of authority to do business in Idaho to be eligible to bid on and purchase State timber. ( )

**02. Opening the Auction.** The Director's representative will open the sale, read the advertisement, ask for questions, and then accept bid deposits. Each eligible bidder will select a numbered card to determine who will be allowed the first bid. The person entitled to the first bid may bid the minimum appraised or any higher price. Any bidder is then entitled to bid and bidding progresses with each previous bid being accepted by the last bidder. All bidding is done in the form of an oral auction. ( )

**03. Closing the Auction.** The Director's representative will close the auction and award the sale to the successful bidder. Bid deposits will be returned to the unsuccessful bidders. Sale values and charges will be calculated on the day of sale. Within ten (10) days the successful bidder will be required to pay ten percent (10%) of the final net sale value. Surety bid bonds must be replaced with cash within ten (10) days of the date of sale, either separately or as part of the total ten percent (10%) initial deposit. ( )

**032. TIMBER SALE CONTRACT SIGNATURES.**

The Department shall prepare and make available to the purchaser a contract and supplemental documents, including bond forms, with appropriate instructions. The purchaser shall return the signed contract and bonds for appropriate State signatures. The State will return a fully executed contract to the purchaser. ( )

**033. INITIAL DEPOSIT AND BONDS.**

**01. Initial Deposit.** The initial deposit (ten percent (10%) of net sale value) shall be retained by the state as a cash reserve for the duration of the contract; the purchaser shall not be entitled to any interest earned thereon. ( )

**02. Performance Bond.** A bond of sufficient amount for carrying out in good faith all applicable laws and all the terms and conditions imposed by the Board and the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) shall be executed within thirty (30) days from the date of sale but prior to execution of the contract. ( )

**03. Guarantee of Payment.** Prior to cutting of any forest products, the purchaser shall provide a bond

acceptable to the Department as assurance of payment for products to be cut and/or removed during the next ninety (90) days. This bond is in addition to the required initial deposit. ( )

**034. -- 040. (RESERVED).**

**041. STUMPAGE AND INTEREST PAYMENT.**

A stumpage summary of forest products measured during the prior month and a statement of account will be prepared by the Department and forwarded to the purchaser monthly. The statement shall include interest computed from the date of sale to the date of the billing at a rate specified in the contract. The purchaser shall make payments within thirty (30) days of the end of the billing period or the payment shall be considered delinquent. ( )

**042. TIMBER SALE CANCELLATION.**

It is the purchaser's responsibility to initiate cancellation by submitting such request in writing to the respective supervisory area office. A signed and notarized early release form must be completed by the purchaser when cancellation is requested prior to the original contract expiration date. When all contractual requirements have been completed, final payments have been received, all load tickets have been accounted for, and a written request for cancellation has been received by the Department, any credit balances will be returned and/or transferred to other timber sale accounts as requested by the purchaser within forty-five (45) days. ( )

**043. TIMBER SALE TERMINATION.**

**01. Request.** A timber sale purchaser may, for reasons of hardship, make written request to terminate a timber sale contract before harvesting is completed. In such cases, the Board will determine if a hardship exists and if the contract should be terminated. ( )

**02. Premature Termination Policy.** ( )

**a.** The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained as a penalty, which amount may not be used as payment for forest products cut and/or removed. Additionally, the Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will have to pay five hundred dollars (\$500) upon termination. ( )

**b.** If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. ( )

**c.** The purchaser who has terminated a timber sale contract will not be eligible to rebid that particular sale unless specifically authorized to do so by the Board. ( )

**044. -- 999. (RESERVED).**